

PPP Receives Additional \$321 Billion; SBA Speaks To “Necessity”

On Friday, April 24, 2020, President Trump signed into law legislation that provides additional funding for the federal Paycheck Protection Program (“PPP”), which was designed to aid small businesses during the COVID-19 crisis.

The PPP loan program allows small businesses to borrow up to \$10 million, backed by the Small Business Administration (“SBA”), with all of the loan potentially forgiven if the business retains its payroll through June 30, 2020. We have issued several prior alerts on the PPP and related topics [here](#), [here](#), [here](#), [here](#) and [here](#). The PPP proved so popular that last week the SBA announced that the initial funding provided in the federal CARES Act, signed into law on March 27, 2020, had been exhausted, and that loan applications under the program were temporarily suspended.

The new legislation reopens the program by providing an additional \$321 billion in funding for the PPP, along with additional emergency funding for hospitals and testing measures. Small businesses that have applications pending, or have yet to apply, are encouraged to contact their financial institution immediately. While this new funding is a welcome relief, it is likely that allocated PPP funds will be exhausted before all eligible small businesses are able to obtain PPP loans, and it remains unclear whether Congress has the appetite for further funding of the program.

This advisory is for information purposes only, and does not constitute legal advice. If you would like to discuss the impact of COVID-19 on you or your business, please contact Joe Laferrera, Aaron Kriss, or Sean Gilligan at (617) 350-6800, or email them at joe.laferrera@gesmer.com, aaron.kriss@gesmer.com, or sean.gilligan@gesmer.com.

Also, on Thursday, April 23, 2020, the SBA issued updated guidance on the PPP in the form of Frequently Asked Questions. Most of the new guidance reiterates prior guidance from the SBA or Treasury Department. Garnering the most attention in the new FAQs is “FAQ 31.” Generally, an applicant needs only to certify that the PPP loan request is necessary to support ongoing business operations. The SBA now advises that the certification must take into account the borrower’s current business and ability to access other sources of liquidity that is not detrimental to its operations. While the SBA’s new guidance seems to focus on large publicly traded companies, it may also apply to private companies that can raise new or additional capital through the sale of stock, membership interests or convertible debt. This guidance is in response to negative public reaction to some larger corporations and national chains receiving PPP funds while smaller mom-and-pop operations have still not been approved. According to the FAQ, if a borrower applied for the PPP loan prior to April 23, 2020 and repays the loan in full by May 7, 2020, it will be deemed by SBA to have made the required certification in good faith.

Please contact Joe, Aaron, or Sean with any questions regarding the PPP application process or your particular situation.



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